

**BEFORE
THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:

Titan Restaurant, Inc.
t/a Hamburger Mary's

Application for a Retailer's Class
CR License – substantial change
at premises
1337 14th Street, NW
Washington, D.C.

Case No. 50088-03/041P
2004-54

Jacqueline Reed, Sean Metcalf, Jessica Stewart, David Gainer, Curtis Millay, John Mussells, Premila Mussells, Grafton Biglow, Karol Biglow, and Doll Gorden,
Protestants

Andrew J. Kline, Esquire, on behalf of Hamburger Mary's, Applicant

BEFORE: Charles A. Burger, Chairperson
Vera Abbott, Member
Judy A. Moy, Member
Audrey E. Thompson, Member
Peter B. Feather, Member

**ORDER ON WITHDRAWN PROTEST
AND VOLUNTARY AGREEMENT**

The request to change the operation of the licensed business to include the use of a sidewalk café, to provide dancing with a "DJ", to provide live music, to allow changes regarding the use of the front façade garage door, and to extend the hours of operation was protested. The matter came before the Board on June 4, 2003, in accordance with D.C. Official Code §25-601 (2000 Edition). Jacqueline Reed, Sean Metcalf, Jessica Stewart, David Gainer, Curtis Millay, John Mussells, Premila Mussells, Grafton Biglow, Karol Biglow and Doll Gordan filed opposition in a timely manner..

The official records of the Board reflect that Jacqueline Reed and Charles Reed have reached an agreement dated April 1, 2004, and that the Advisory Neighborhood Commission 2F, Rhode Island West Neighborhood Association and Logan Circle Community have reached an agreement dated May 19, 2003 with the Applicant. Both agreements have been reduced to writing and have been properly executed and filed

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with the Board. Pursuant to the agreements, the protestants have agreed to withdraw the opposition, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreements.

Accordingly, it is this 21st day of July 2004, **ORDERED** that:

1. The opposition of Jacqueline Reed, Sean Metcalf, Jessica Stewart, David Gainer, Curtis Millay, John Mussells, Premila Mussells, Grafton Biglow, Karol Biglow and Doll Gordan is **WITHDRAWN**;

2. The request to change the operation of the licensed business to include the use of a sidewalk café, to provide dancing with a "DJ", to provide live music, to allow changes regarding the use of the front façade garage door,, and to extend the hours of operation is **GRANTED** to Titan Restaurant, Inc. t/a Hamburger Mary's, holder of a Retailer's Class CR License (substantial change) at 1337 14th Street, NW, Washington, DC;

3. The above-referenced agreements between the parties is **INCORPORATED** as part of this Order; and

4. Copies of this Order shall be sent to the Protestants, the Attorney for the Applicant, and the Applicant.

District of Columbia
Alcoholic Beverage Control Board

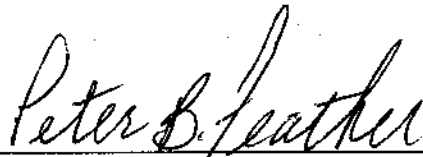
Charles A. Burger
Charles A. Burger, Chair

Vera M. Abbott
Vera Abbott, Member

Judy A. Moy
Judy A. Moy, Member

Audrey E. Thompson
Audrey E. Thompson, Member

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Peter B. Feather, Member

AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT ("Agreement") made this 1st day of April, 2004, by and between Titan Restaurants Groups, Inc. and Glen Mlaker (collectively "Titan") and Jacqueline Reed and Charles D. Reed ("Reeds").

WITNESSETH

WHEREAS, Titan leases property at 1337 14th Street, N.W., Washington, DC, upon which it conducts business as a restaurant and holds a retailer's liquor license Class CR (Application No. 50088) issued by the District of Columbia Alcoholic Beverage Control Board ("ABC Board");

WHEREAS, Reeds own property at 1339 14th Street, N.W., Washington, adjacent to Titan's leased premises, which property is a mixed use building containing retail, commercial and residential tenants;

WHEREAS, disputes and problems between the parties have arisen as a result of complaints by the Reeds, their tenants and others as to noise, vibration and other problems allegedly associated with Titan's operations, as a result of which the Reeds and other parties, among other things, opposed Titan's proceedings before the ABC Board in connection with its application for liquor license in 2000, its request for renewal of liquor license in 2002, and its request filed in 2003 for substantial change in operating conditions pursuant to DCMR §505;

WHEREAS, the parties have sought to resolve the problems between in part by entering to a certain Voluntary Agreement, dated December 20, 2000 ("Original Agreement"), and, subsequently, into an additional agreement, dated December 10, 2002 ("Additional Agreement"), pursuant to which Titan undertook to cause certain improvements to be made in accordance with designs provided by an acoustical engineer in return for which the Reeds withdrew a then

pending protest for the renewal of Titan's liquor license before the District of Columbia ABC Board;

WHEREAS, the parties wish to reach mutually agreeable arrangements under which Titan may conduct its business with the greatest flexibility permitted by law and regulations of the District of Columbia while at the same time strictly respecting the rights of the Reeds, their tenants and others affected by Titan's operations, which rights include without limitation the right of quiet peaceful enjoyment of the adjacent property; and it being understood that certain limitations on Titan's operations and certain affirmative actions by Titan may be necessary to reach that result;

WHEREAS, the parties intend that this Agreement amend and restate the Original Agreement and Additional Agreement, which shall continue in full force and effect, subject to the modifications contained in this Agreement, which shall become an enforceable agreement between the parties thereto.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the parties agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.
2. Parking. Titan has entered into and shall retain an agreement with the Washington Plaza Hotel to provide garage parking for its patrons. Patrons who present a valid parking ticket will have \$5.00 deducted from their party's check. Titan shall advertise the availability of parking on its menu and on a sign posted at the entrance to the establishment. To the extent this contract with the Washington Plaza Hotel terminates for any reason, Titan shall enter into a like agreement to provide adequate off-street private parking for its patrons.

3. Noise and Privacy. Titan will comply with the D.C. Noise Control Act, make additional architectural improvements to the property as may be required from time to time to ensure that music, noise and vibration from the establishment are not audible from within the adjacent residential properties. Titan will also ensure that music, noise and vibration are not disruptive to the adjacent residential property owners' reasonable use of outdoor areas of their property. In that regard:

a. Improvements to Property and Fire Door Maintenance. Architectural improvements to the property made to the property in accordance with the terms of the Original Agreement and Additional Agreement shall be maintained. These include (1) construction of the rear building wall with solid masonry materials and placement of 6-inch glass block in all existing rear windows, (2) encasement of the rear fire exit stairwell with solid masonry material, (3) construction in the front of the building an additional fire exit stairwell which shall be shielded with fire-rated dry wall to act as a further noise buffer between the dining room and the adjacent mixed use property, and (4) construction of an engineered noise reducing wall on the North wall and hall-way of that portion of the second floor that abuts 1339 14th Street, NW, an adjacent mixed use property containing residential units. Titan shall keep all fire doors closed at all times. The parties understand that the improvements to date do not operate in themselves to eliminate audible music, noise and vibration from the adjoining property. Titan shall strictly maintain music, noise and vibration levels within its premises so as not to be audible outside of the building and, specifically, to tenants in 1339 14th Street, NW. Titan may at its expense make such other improvements as may be necessary to abate the music, noise and vibration problems, but installation of additional improvements shall in no way reduce Titan's duty to adhere to the non-audibility requirement.

b. Operations to Reduce Noise to Adjacent Properties. As a further means of operating in a manner that does not affect the quiet and peaceful enjoyment of adjacent properties, Titan shall close its second floor windows after 7:00 p.m., and Titan agrees to keep the front facade garage door closed after 10:30 p.m. Titan shall restrict the type of speakers used within the establishment to minimize bass levels. Speakers will not be affixed to the building second floor wall adjacent to 1339 14th Street, and no speakers will be placed on the exterior of the property. If necessary, Titan will take reasonable steps to reduce noise emanating from the establishment from the opening of entrance and exit doors.

4. Deliveries and Rear Exit. Titan shall not use the rear alley at any time for deliveries or for non-emergency use by its patrons. All deliveries are to be made from the 14th Street front entrance. The rear exit will be marked from the inside as "Emergency Exit Only", and shall only be used in the event of emergencies. Titan agrees to install motion sensor lights in the rear exit vestibule and to install a security gate flush with the outside wall.

5. Public Space and Trash. Titan agrees to obtain a dumpster to be placed at the rear of the building sufficient to hold all refuse between dumpster pick-ups. Titan further agrees to hold all recyclable materials and perishable food waste within the building until the morning of the scheduled pick-up. Trash and recyclable material will not be deposited into the outside dumpster or other exterior holding facilities between the hours of 11:00 p.m. and 8:30 a.m. Titan will also police the immediate alley and sidewalk (up to and including the curb) twice daily for refuse and other materials and maintain a clean rear presence in these areas. Titan shall require its trash and recycling contractors to pick-up trash and materials after 9:00 a.m. Titan will not install exterior public pay telephones.

6. (a) Dancing and Music. Unless and until the Titan is granted authorized to do so in accordance with paragraph 14, below. Titan shall not offer, create facilities for, or otherwise

encourage or permit dancing by patrons or employees. Titan shall not have live music or disc jockeys.

(b) Sidewalk Service. Upon execution of this Agreement Reeds will withdraw its pending protest as to Titan's pending application for substantial change insofar as such requests seeks to have outdoor seating and food and alcoholic beverage service immediately in front of 1337 14th Street, NW, provided that Titan's request will be limited to eight (8) tables of no more than sixteen seats; the seating area shall be cordoned with wrought iron fencing which will require patrons to enter the sidewalk service area only through the restaurant. The cordoning will be removed at night. The sidewalk service area will not exceed the space shown in the permit drawings and will at all times permit unimpeded pedestrian traffic and ingress and egress from abutting properties; Titan shall not permit noises in the outdoor area that disturb the quiet enjoyment of residential and commercial tenants of 1339 14th Street, and shall otherwise comply with applicable DC and ABC Board regulations relating to outdoor operations.

7. Roof Top Equipment. Titan agrees to retain all rooftop mechanical equipment in the center and southern end of the building roof. Titan also agrees to maintain this equipment so as not to have an adverse impact on the adjacent properties, including with respect to noise.

8. Patrons. Titan shall take reasonable steps to prevent its patrons from causing noise or disturbances in front of the establishment during the hours of operation and as they depart at closing, including posting a sign at the exit of the establishment instructing patrons that they are within a residential neighborhood and special care should be taken to leave the area quietly.

9. Hours of Operation. Titan's hours of operation shall be as follows:

Sunday - Thursday

10:00 am to 1:00 am

Friday - Saturday	10:00 am to 2:00 am
New Year's Eve	10:00 am to 4:00 am
Days preceding federal holidays, other than Fridays or Saturdays	10:00 am to 2:00 am

Up until two (2) hours prior to closing, Titan's kitchen facilities shall remain open with full menu service. The foregoing hours for Sunday - Thursday include an additional hour over the currently approved hours.

10. Security. Titan shall reasonably control unruly behavior by its patrons, whether on or in the area immediately adjacent to its premises.

11. License Ownership. Titan agrees to abide by all alcoholic beverage control regulations regarding the ownership of the license. Titan also agrees to be the sole owner of the ABC license and agrees to not transfer or sell the license to any other entity before obtaining approval from the ABC Board. In addition, the parties hereto recognize that Titan is representing its intention to obtain its license for the purpose of operating under the National franchise known as Hamburger Mary's. Titan and Reeds agree that this particular representation is important, in that it represents Titan's intention to operate a prominent establishment. In the event that Titan's relationship with the Hamburger Mary's franchise terminates and Titan intends to continue operating at its premises, the parties agree that this will constitute a "substantial change" as defined under DCMR § 505, requiring prior notice to Reeds and approval by the Board. Titan agrees to specifically notify any prospective transferee, assignee or contractee of the existence of this Agreement and provide them with a copy.

12. Representations regarding Additional Agreement. The parties acknowledge and affirm to each other that the provisions of paragraphs 1 through 4 of the Additional Agreement have been completed to their mutual satisfaction.

13. Binding Effect. This Agreement shall be binding upon and enforceable against the successors and assigns of the parties. Titan agrees that it shall not contest the validity or enforceability of this Agreement before the ABC Board or in any Court wherein Reeds may bring any action under or in connection with the Agreement; but this shall not prevent Titan from defending against the substantive allegations in any such proceeding or suit. Titan's undertaking not to contest shall not in any way be affected by any change in District of Columbia legislation or regulation or policy of the ABC Board with respect to voluntary agreements generally; and the parties represent to each other that this Agreement is valid and enforceable *inter se* for the purposes of resolving differences between two adjacent property owners and/or occupants.

14. Proceedings Before the ABC Board.

(a) Titan agrees that it shall forthwith modify its pending request for substantial proceedings before the ABC Board to conform to the limitations on Titan's operations stated in this Agreement.

(b) Reeds agree that they shall withdraw their current protest and shall seek to cause other protestants aligned with them to do so, subject to the other provisions of this paragraph.

(c) If Titan has not violated this Agreement for a period of one year from the date of this Agreement and complies with subparagraph 14(d), below: (a) Reeds agree that (i) they will not protest if Titan applies for a substantial change under DCMR §505 to permit live music, dancing, disc jockeys; (ii) they will support such application if requested to do so by Titan; and (b) the parties will enter into an amendment of paragraphs (9) and 6(a) of this Agreement to reflect such substantial changes if the ABC Board grants such application. Titan shall be deemed not to have violated this Agreement if (a) the ABC Board has not instituted any

disciplinary proceedings or imposed any sanctions on Titan during the one-year period and (b) Reeds certify in writing that Titan has been in compliance with the Agreement to the satisfaction of Reeds. If Reeds refuse to provide the certification, their determination shall be binding unless Titan demonstrates by clear and convincing evidence that such refusal is unreasonable.

Anything to the contrary notwithstanding, if the ABC Board grants such application, nothing shall reduce Titan's obligations independently under this Agreement and under applicable conditions of licenses granted by the ABC Board, particularly in respect of music, noise and vibration levels.

(d) If Titan elects to apply to the ABC Board for a substantial change in its operations that would affect its obligations under paragraphs 6(a) or 9 of this Agreement, it shall first engage a mutually agreeable licensed acoustical engineering consultants who shall undertake further acoustical analyses and propose such improvements as they deem necessary to assure that noise and vibration from Titan's operations will not be audible to or sensible by tenants of 1339 14th Street, NW. It is the spirit of this provision that additional sound and vibration improvements will be required to the ceilings and other parts of the second floor of Titan's leased premises. Reeds (and, if the Reeds so choose, experts engaged and paid by the Reeds) shall be entitled to review the reports and proposals of such engineers and comment on them.

(e) The parties agree that the limitations imposed on Titan under this Agreement reflect privately bargained and agreed provisions relating to the resolution of disputes between adjoining property owners arising out of noise, vibration, and other activities associated with Titan's operations. Nothing contained herein is intended to restrict the authority of the ABC Board to regulate Titan's liquor license, but the parties represent and warrant that their

promises under this Agreement are binding and enforceable as between them in any court of competent jurisdiction as relates to any provision that affects the quiet peaceful enjoyment of tenants and occupants of 1339 14th Street, NW, or any nuisance or other common law right of ~~such tenants and occupants~~.

The parties also agree that they shall enter into a Voluntary Agreement in such form and content as their respective counsel may deem mutually agreeable to submit to the ABC Board. Such Voluntary Agreement shall not contain terms contrary to those contained herein.

15. Notices. In the event of a violation of the provisions of this Agreement, Titan shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days thereafter before action against Titan on the basis of such violation may be undertaken; except where such violation involves disturbance of quiet peaceful enjoyment of tenants or occupants of 1339 14th Street, NW, Titan shall immediately cease such disturbance and no further notice shall be required with respect to any repeated disturbance. A material violation of this Agreement or its ABC license by Titan which has not been cured after such thirty (30) days' notice shall permit Reeds to enforce this Agreement by any remedy available in law or equity, including but not limited to seeking a Show Cause Order from the ABC Board where such breach is a violation of Titan's liquor license conditions. The 30-day cure provision provided for in this paragraph shall not apply to recurring violations. Any notices required to be made under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or hand-delivered, to the other parties to this Agreement. Notice is deemed to be received upon mailing. Notice is to be given as follows:

1. If to Titan, to:

Glen Mlaker
President

Titan Restaurants, Inc.
1337 14th Street, N.W.
Washington, DC 20005

With a copy to:

Andrew J. Kline, Esquire

~~1900 M Street, N.W., Suite 750~~
Washington, DC 20036

1225 19th St. NW. Suite 320

2. Reeds

Jacqueline Reed
1310 Q Street N.W.
Washington, DC 20009

Charles D. Reed
1310 Q Street N.W.
Washington, DC 20009

The parties may change the notice addresses listed above by written notice to the others.
Failure to give notice shall not constitute waiver or acquiescence to the violation.

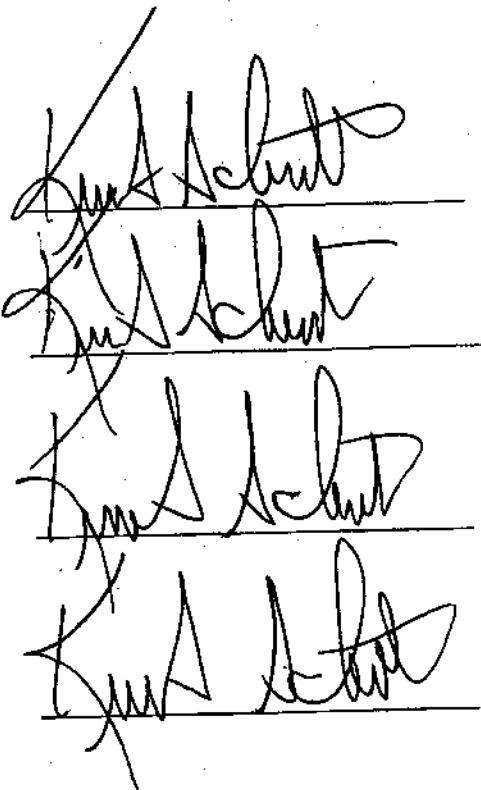
16. Construction of "Disk Jockey." Nothing in this Agreement or its negotiation history is intended to be construed as a definition of the term "disk jockey."

17. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

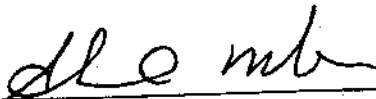
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

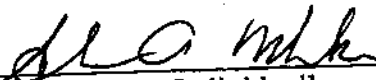
WITNESS:



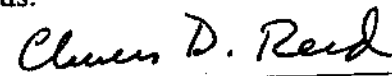
Titan:

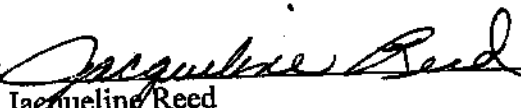
Titans Restaurants Group, Inc.

By: 
Glen Mlaker, President

By: 
Glen Mlaker, Individually

Reeds:

By: 
Charles D. Reed

By: 
Jacqueline Reed
[Add other parties]